

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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)	
BRAINTREE LABORATORIES, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 12-cv-6851-AJN
)	ECF Case
)	
CYPRESS PHARMACEUTICAL, INC.,)	
)	
Defendant.)	
)	
)	

DECLARATION OF JENNIFER BROWN IN SUPPORT OF PLAINTIFF
BRAINTREE LABORATORIES, INC.'S OPPOSITION TO
DEFENDANT CYPRESS PHARMACEUTICAL, INC.'S MOTION FOR
SUMMARY JUDGMENT OF NONINFRINGEMENT

I, Jennifer Brown, declare as follows:

1. I am an associate with the law firm Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts, which is counsel to Plaintiff Braintree Laboratories, Inc. ("Braintree"), in the above-captioned matter. I am admitted to practice before this Court *pro hac vice* and make this declaration in support of Braintree Laboratories, Inc.'s Opposition to Defendant Cypress Pharmaceutical, Inc.'s Motion for Summary Judgment of Noninfringement. Unless otherwise stated, I know the facts stated herein of my personal knowledge.

2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the transcript of the hearing before Judge Alison J. Nathan, held June 10, 2013 in this case.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the certificate of correction for U.S. Patent No. 6,946,149, dated February 9, 2010, and bearing the Bates production number BRTSUP00000240.

4. Attached hereto as **Exhibit 3** is a true and correct copy of the Request For Ex Parte Reexamination Under §§302-307 and 37 C.F.R. §1.510, filed with the United States Patent Office on October 15, 2008 for Patent No. 6,946,149, and bearing the Bates production numbers BRTSUP00000622-BRTSUP00000639.

5. Attached hereto as **Exhibit 4** is a true and correct copy of the Notice of Intent to Issue Ex Parte Reexamination Certificate from the United States Patent Office, dated March 26, 2009, and bearing the Bates production numbers BRTSUP00000471-BRTSUP00000476.

6. Attached hereto as **Exhibit 5** is a true and correct copy of the Opinion of United State District Judge Peter G. Sheridan on the validity of United States Patent No. 6,946,149, filed on June 4, 2013, in *Braintree Laboratories, Inc. v. Novel Laboratories, Inc.*, Case No. 11-cv-1341 (D.N.J.), Dkt. No. 380.

7. Attached hereto as **Exhibit 6** is a true and correct copy of the Memorandum and Order on Claim Construction, filed on September 19, 2012, in *Braintree Laboratories, Inc. v. Novel Laboratories, Inc.*, Case No. 11-cv-1341 (D.N.J.), Dkt. No. 130.

8. Attached hereto as **Exhibit 7** is a true and correct copy of the Final Judgment, filed on June 19, 2013, in *Braintree Laboratories, Inc. v. Novel Laboratories, Inc.*, Case No. 11-cv-1341 (D.N.J.), Dkt. No. 389.

9. Attached hereto as **Exhibit 8** is a true and correct copy of the NDA Approval Letter, dated August 5, 2010.

10. Attached hereto as **Exhibit 9** is a true and correct copy of Selected Pages from Cypress Abbreviated New Drug Application, bearing Bates production number CYPRESS000068, CYPRESS000205, CYPRESS000208 and CYPRESS000322. Sealing of this exhibit has been requested by letter to Judge Nathan dated August 2, 2013.

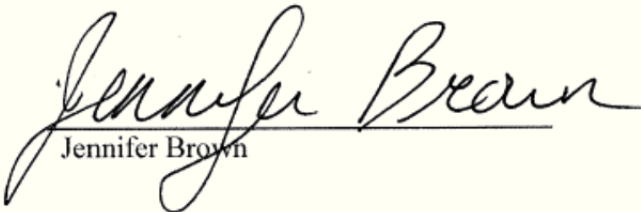
11. Attached hereto as **Exhibit 10** is a true and correct copy of the SUPREP Bowel Prep Kit Prescribing Information, bearing Bates production numbers BRTSUP00000129-BRTSUP00000154.

12. Attached hereto as **Exhibit 11** is a true and correct copy of the Stipulated Facts for Purposes of Cypress' Motion for Summary Judgment of Noninfringement, dated July 15, 2013.

13. Attached hereto as **Exhibit 12** is a true and correct copy of the Order Denying Novel's Motion for Reconsideration, filed on February 5, 2013, in *Braintree Laboratories, Inc. v. Novel Laboratories, Inc.*, Case No. 11-cv-1341 (D.N.J.), Dkt. No. 332.

I declare under penalty of perjury under the laws of the United States and the Commonwealth of Massachusetts that the foregoing is true and correct and that this declaration was executed on August 2, 2013 at Boston, Massachusetts.

Executed on: August 2, 2013


Jennifer Brown

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2013, a true and correct copy of the foregoing
DECLARATION OF JENNIFER BROWN IN SUPPORT OF BRAINTREE LABORATORIES,
INC.'S OPPOSITION TO DEFENDANT CYPRESS PHARMACEUTICAL, INC.'S MOTION
FOR SUMMARY JUDGMENT OF NONINFRINGEMENT was filed through the Court's
Electronic Filing System (ECF), and was served electronically to the registered participants as
identified on the Notice of Electronic Filing (NEF).

Dated: August 2, 2013

/s/ John J. Regan